

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LORRIE KUTZ, a/k/a LORRIE DEVRIES,

Plaintiff-Appellee,

V

JEFFREY KUTZ,

Defendant-Appellant.

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UNPUBLISHED

May 1, 2012

No. 300864

Kent Circuit Court

LC No. 95-000492-DM

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Defendant, Jeffrey Kutz, appeals by leave granted the October 8, 2010, order confirming an arbitrator's decision to award plaintiff, Lorrie Kutz, the sum of \$43,960 as her share of the past amount paid on defendant's pension and other relief. Because the arbitrator did not exceed the scope of his authority and power to act under the arbitration agreement, we affirm.

The parties were divorced in 1996. A provision in their September 1996 judgment of divorce awarded plaintiff 50 percent of 14/17's of defendant's pension "as of 12/31/94, which shall be confirmed in a QDRO of even date, and the same amount of any and all of the following items earned by defendant as of 12/31/94 . . ." Defendant apparently began receiving pension payments in 2004. No QDRO, however, was submitted and approved by the appropriate plan administrator after entry of the judgment of divorce, such that plaintiff did not receive any pension payments. In early 2008, plaintiff contacted a new attorney, who presented a proposed QDRO to the plan administrator for review and approval. After that and a second proposed QDRO were deemed to not be qualified QDRO's, plaintiff discovered alleged inconsistencies between the proposed QDRO's and the parties' judgment of divorce with respect to her rights to defendant's pension benefits. The parties agreed to arbitrate the matters pertaining to defendant's pension. The arbitrator awarded plaintiff 35 percent of the gross amount defendant had collected since the divorce judgment had entered, stating that the payment was the "functional equivalent of family support" and shall be considered "alimony in gross" such that it cannot be discharged in a bankruptcy proceeding. The arbitrator further directed how the QDRO should be drafted. The trial court confirmed the arbitrator's decision.

We review a trial court's ruling on a motion to vacate or modify an arbitration award de novo, keeping in mind that judicial review of arbitration awards "is one of the narrowest standards of judicial review in all of American jurisprudence." *Washington v Washington*, 283

Mich App 667, 671 n 4; 770 NW2d 908 (2009). Additionally, whether an arbitrator exceeded his power is reviewed de novo. *Id.* at 672. However, we will not review the arbitrator's findings of fact, and any legal error must be discernible "on the face of the award itself." *Id.* at 672-673. The phrase "on its face," refers to "legal error that is evident without scrutiny of intermediate mental indicia." *Id.* A party seeking to prove that a domestic relations arbitrator exceeded his authority must establish that the arbitrator either: (1) acted beyond the material terms of the arbitration agreement or (2) acted contrary to controlling law." *Id.* at 672.

In the present case, defendant first argues that the arbitrator exceeded his authority under the arbitration agreement by awarding spousal support. We disagree.

"[T]his Court has consistently held that arbitration is a matter of contract and the arbitration agreement is the agreement that dictates the authority of the arbitrators." *Cipriano v Cipriano*, 289 Mich App 361, 371; 808 NW2d 230 (2010). Arbitration agreements should be interpreted in the same manner as ordinary contracts. *Bayati v Bayati*, 264 Mich App 595, 599; 691 NW2d 812 (2004). In other words, "[t]hey must be enforced according to their terms to effectuate the intentions of the parties." *Id.*

In this case, the arbitration agreement between plaintiff and defendant gave the arbitrator authority to determine:

- a. All issues related to the parties' respective rights in Defendant's pension and QDRO rights for Plaintiff;
- b. Court costs, expenses, attorney fees and expert witness fees.

In making his argument, defendant essentially suggests that the label "spousal support" necessarily means the arbitrator exceeded his authority because "spousal support" was not an issue for the arbitrator's consideration. We have previously rejected this argument for its failure to distinguish between "alimony in gross" and "periodic alimony." *Krist v Krist*, 246 Mich App 59, 63-64; 631 NW2d 53 (2001). "[A]limony in gross is not really alimony intended for the maintenance of a spouse, but rather *is in the nature of a division of property*. By contrast, periodic spousal support payments are designed to ensure the maintenance of a spouse for a period after the divorce." *Id.* Consideration of the substance of the award at issue indicates it was not a periodic payment for plaintiff's maintenance. Rather, the sum was intended to provide her a property share in defendant's pension, the very issue the arbitrator was asked to decide. As such, the arbitrator did not exceed his authority. *Krist*, 246 Mich App at 62-64.

Next on appeal, defendant argues the arbitrator exceeded his authority by acting contrary to controlling law. This Court has stated that an arbitrator exceeds his authority if he acts "in contravention of controlling principles of law." *Washington*, 283 Mich App at 672. In addition to this general principle, defendant argues the arbitration agreement specifically required the arbitrator to follow Michigan law. We first find that the arbitration agreement placed no unique limitations on the arbitrator in relation to his application of Michigan law. Rather, looking at the plain terms of the agreement and endeavoring to effectuate the parties' intent, *Bayati*, 264 Mich App at 599, we conclude the parties only articulated an intent to apply Michigan's arbitration

laws without expressing any unique emphasis on the applicable Michigan substantive law. Most notably, the agreement indicated:

2. **Law:** The parties agree to be bound by the laws of the State of Michigan with regard to the arbitration, and the arbitrator agrees to follow the current Michigan statutes, MCL 600.5070 et seq. and MCR 3.602.

Later in the agreement, the parties reiterated their intent to apply Michigan's arbitration laws "as stated in Paragraph 2," and specified that any deviation from paragraph 2 (including related case law or statutes) would be outside the scope of the arbitrator's authority. In reviewing these provisions, we note that the specific statutes referenced, MCL 600.5070 *et seq.* and MCR 3.602, are not substantive provisions relating to the division of pensions in a divorce action, rather they deal with the arbitration process, including arbitration in the context of domestic relations. Similarly, the parties agreed to be "bound by the laws of the State of Michigan *with regard to the arbitration.*" This again suggests that this paragraph was intended to define what laws governed the arbitration proceedings, without any special emphasis on Michigan substantive law.

Having decided the parties did not specifically contract for the application of Michigan substantive law, we nevertheless recognize the general proposition that an arbitrator exceeds his authority by acting contrary to controlling law. *Washington*, 283 Mich App at 672. Accordingly, we must consider defendant's argument that controlling law precludes an award in a QDRO not specified in a judgment of divorce. *Quade v Quade*, 238 Mich App 222, 224; 604 NW2d 778 (1999); *Roth v Roth*, 201 Mich App 563; 506 NW2d 900 (1993). We conclude that defendant's analysis takes too narrow a view of the power conferred on the arbitrator in the arbitration agreement.

The arbitration agreement dictates the authority of the arbitrator. *Cipriano*, 289 Mich App at 371. Here, that authority included discretion to rule on: "All issues related to the parties' respective rights in Defendant's pension and QDRO rights for Plaintiff." "[T]here is no broader classification than the word 'all.'" *Skotak v Vic Tanny Intern, Inc.*, 203 Mich App 616, 619; 513 NW2d 428 (1994). "In its ordinary and natural meaning, the word 'all' leaves no room for exceptions." *Id.* In using the word "all," the parties gave the arbitrator a broad grant of authority to resolve *all* issues relating to the pension. Among the issues for the arbitrator to resolve was how to account for the time when defendant was collecting benefits that should, in part, have gone to plaintiff. Defendant's retention of 100 percent of the pension payments was a fact the arbitrator found troubling. This finding of fact raised an equitable issue within the scope of the arbitrator's authority to consider *all* issues related to the parties' rights in defendant's pension. Having given the arbitrator the authority to decide "all" issues relating to the pension, it is disingenuous to now argue that he exceeded his authority. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004) (finding signatories to a contract are presumed to understand the import of the document and to have the "intention manifested by its terms"). In giving the arbitrator the authority to decide "all" issues, defendant and plaintiff afforded him a broader grant of authority than a court considering the matter might have had under *Roth* or *Quade*. The arbitrator's decision need not be reversed simply because a court would not or could not have made such an equitable award. MCR 3.602(J)(2)(d).

Moreover, we find no clear error of law on the face of the award. On the contrary, the arbitrator specifically demonstrated his understanding of *Roth* and *Quade* by acknowledging they stood “for the proposition that the QDRO could not provide for any benefits not properly incorporated into the Judgment.” He further assured the parties: “I considered all aspects of Michigan law in making the following decision . . .” In fact, the arbitrator aptly applied *Roth* and *Quade* by declining to order any kind of surviving spouse benefit for the stated reason that such a benefit was not contemplated in the judgment of divorce.<sup>1</sup> In short, from the face of the award it appears that the arbitrator selected the appropriate law, and clearly understood its implications. Having reached the conclusion that the arbitrator “utilized controlling law, [this Court] cannot review the legal soundness of the arbitrator’s application of Michigan law.” *Washington*, 283 Mich App at 674. Delving further into whether the arbitrator’s decision complies with the rulings in *Roth* and *Quade* requires speculation as to the arbitrator’s “mental indicia,” an inappropriate level of review. *Washington*, 283 Mich App at 672-673. Particularly, to determine if the arbitrator violated *Roth* and *Quade* would necessarily require this Court to interpret the terms of the judgment of divorce and original QDRO<sup>2</sup> to see if the arbitrator’s award exceeded the scope of what was expressly permitted. However, reviewing courts do not engage in contract interpretation because it is viewed as an issue for the arbitrator. *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). On the face of the award, we find no indication that the arbitrator exceeded his authority.

Affirmed.

/s/ Patrick M. Meter  
/s/ Deborah A. Servitto  
/s/ Cynthia Diane Stephens

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<sup>1</sup> In fact, the judgment of divorce is rather broad with respect to its division of retirement benefits. It specifies that plaintiff is awarded “fifty percent of 14/17’s of Defendant’s pension, as of 12/31/94, which shall be confirmed in a QDRO of even date, and the same amount of any and all of the following items earned by Defendant as of 12/31/94; (a) any pension, annuity, IRA or retirement benefits; (b) any accumulated contributions in any pension, annuity, or retirement system; and (c) any right or contingent right in and to vested pension, annuity, or retirement benefits.”

<sup>2</sup> Defendant argues the parties’ judgment of divorce is the only controlling document. However, because the judgment of divorce in this case called for the entry of the QDRO, we conclude that they are “two parts of a whole” and must both be considered in analyzing the parties’ intent as to the distribution of defendant’s pension. *Neville v Neville*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket Nos. 294461, 302946, February 16, 2012).